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{ REPORT
No. 97-322 }

AUTHORIZING THE DONATION OF SURPLUS PROP-
ERTY TO ANY STATE FOR THE CONSTRUCTION AND
MODERNIZATION OF CRIMINAL JUSTICE FACILITIES

REPORT
OF THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
TO ACCOMPANY
S. 1422
TO AUTHORIZE THE DONATION OF SURPLUS PROPERTY TO
ANY STATE FOR THE CONSTRUCTION AND MODERNIZATION
OF CRIMINAL JUSTICE FACILITIES



MARCH 16 (legislative day, FEBRUARY 22), 1982.—Ordered to be printed

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(III)

AUTHORIZING THE DONATION OF SURPLUS PROPERTY
TO ANY STATE FOR THE CONSTRUCTION AND MOD-
ERNIZATION OF CRIMINAL JUSTICE FACILITIES

MARCH 16 (legislative day, FEBRUARY 22), 1982.—Ordered to be printed

Mr. STEVENS, from the Committee on Governmental Affairs,
submitted the following

REPORT

[To accompany S. 1422]

The Committee on Governmental Affairs, to which was referred the bill (S. 1422) to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. BACKGROUND AND SUMMARY

Prison overcrowding is a problem rapidly reaching crisis proportions. The United States prison population expanded in the first six months of 1981 at more than double the rate of 1980. Since 1976, the population has increased by 50 percent.

One of the forces driving the higher incarceration rate is the increase in violent crime, and the public reaction to such crimes. The number of inmates who committed crimes against persons was between 40 and 60 percent in 1980, an increase of more than 100 percent in ten years. Many states have responded to increasing violence by passing mandatory sentencing laws, many of which disallow parole. These longer sentences and a higher rate of prosecutions and convictions have severely strained prison capacity. Since 1975, the prison population has grown by 55 percent, while cell space has lagged behind at about 25 percent growth over the same period.

Another factor behind the growth in prisoners has been the rise in the general population between the ages of 18 and 25, where criminal activity is historically most common. Between 1975 and 1980, the 18-25 year old population increased by 9.1 percent compared to a 5.4 per-

cent increase overall. Crime statisticians forecast that the baby boom following the Korean War will keep the number of offenders high through the 1980's.

Prison construction has not kept pace. State and local correctional systems have failed to finance and construct new facilities fast enough to accommodate increasing prison populations. Part of the reason for the lag are high construction and operating costs. Maximum security prisons cost between \$75,000 and \$95,000 per cell. Medium security construction averages between \$50,000 and \$60,000 per cell. Annual operation costs vary around \$10,000 per offender.

Over half of the states are under court order to reduce overcrowding, yet are faced with a 5-7 year delay from time of prison financing to time of activation. Many states have had to resort to a variety of short-term arrangements to meet their needs. These include double celling and housing inmates in tents or prefabricated buildings or in space previously allocated to other uses. In addition to having space shortages, many prisons are antiquated: too large to operate efficiently, unsafe and understaffed. The Justice Department estimates that 43 percent of all prisoners are being housed in facilities built before 1925.

While mounting public concern has produced stiffer parole policies and less frequent use of incarceration alternatives such as probation, judges recently have begun to respond to the severity of prison overcrowding by a greater willingness to use such options. This has increased the possibility that some defendants who should be incarcerated remain at large.

While under the Constitution crime control is principally the responsibility of state and local governments, the federal government is in a position to give important assistance in coping with crime. The purpose of S. 1422 is to provide, at low cost to the federal government, assistance to the financially burdened states and local governments as they expand and improve their correctional systems. This measure, which embodies one of the recommendations of the President's Task Force on Violent Crime, amends the Federal Property and Administrative Services Act of 1949 to authorize donations of surplus federal real property to states and localities for correctional use.

The Act provides the statutory means for the disposal of most federal real property which federal agencies find is no longer required for their needs and the discharge of their responsibilities. Under the Act, this property is reported to the General Services Administration, whereupon it is deemed "excess" and is subject to utilization by other executive agencies. When the Administrator of GSA determines that the property is not required by any other federal agency, it is deemed "surplus" and disposed of in accordance with specific authorities provided in the Act.

A number of these authorities (referred to as public benefit disposals) provide for conveyances to state and local governmental units and eligible non-profit organizations for such purposes as airports, hospitals, schools and recreational areas at no cost or at a substantial monetary discount. Under these authorities, the Administrator is authorized at his discretion to donate surplus real property for one of these purposes to the eligible recipients, upon receiving a favorable recommendation from the federal agency (such as the Department of

Education, the Department of Health and Human Resources, etc.) which determines the eligibility of the proposed recipient and evaluates the program of use. The effect of S. 1422 would be to add correctional facilities to this list of public benefit disposals for surplus federal property and to authorize the Administrator of GSA to donate such property to states and localities for correctional uses upon the recommendation of the Attorney General.

II. MAJOR PROVISIONS

The bill as amended by the Committee amends section 203 of the Federal Property and Administrative Services Act of 1949 to provide for the donation of surplus real and related personal property for correctional use. States and their instrumentalities and subdivisions, Commonwealths and Trust Territories would be eligible to receive such property. In keeping with safeguards contained in other public benefit conveyance authorities, property donated under this measure will revert to GSA at the discretion of the Administrator in the event of inappropriate use.

The Federal Property and Administrative Services Act of 1949 charges the Administrator of GSA with the responsibility for disposing of surplus federal property in the most efficient and economic manner in keeping with the best interests of the United States Government.

This bill adds correctional facilities to the small group of activities which enjoy public benefit disposal preference and thus dilutes the pool of property available for other non-federal recipients. However, the Committee believes that the problems raised by prison overcrowding are of a seriousness and urgency clearly justifying exceptional measures.

In consideration of the federal government's priority to assist states and local jurisdictions in their efforts to improve correctional programs and practices, alleviate stress on their correctional systems, or comply with judicial decrees, it is important to emphasize that the federal government has a responsibility to provide adequate assistance in fighting violent crime. In order to be responsive to the immediate needs of the correctional problem, it is important that the federal government deploy its resources to carry out that responsibility in a manner that is both equitable and expeditious.

In implementing this bill, the Department of Justice and the General Services Administration should fully appreciate the sensitivities involved in national law enforcement needs vis-a-vis other local land use interests with respect to surplus federal real property. Accordingly, administrative procedures should be adopted and designed to make sure that (1) federal real property is appropriately used consistent with its existing physical characteristics, thereby providing states and localities the full benefit of the federal government's investment in the property; and (2) decisions between correctional use proposals and competing proposals will be reserved to the Administrator of General Services so that the merits of each will be fully and promptly considered on the basis of the overall national interests involved.

III. SECTION-BY-SECTION ANALYSIS

The first section amends section 484 of title 40, United States Code, by adding a new subsection (p) immediately at the end thereof.

Section 484(p) (1) authorizes the Administrator to transfer to the states, the District of Columbia, the Trust Territories and the Commonwealths, or to any political subdivision or instrumentality thereof, surplus property determined by the Attorney General to be required for correctional facility use by the recipient. Property shall be used only under a program or project for the care or rehabilitation of criminal offenders as approved by the Attorney General. Transfers or conveyances shall be made without payments to the United States.

An appropriate program or project may be any state correctional agency, county jail, halfway house, work-release facility, training facility, prison support service or any activity directly contributing to the care or rehabilitation of criminal offenders.

Surplus real property substantially comprised of facilities formerly used by the federal government for correctional purposes should be reviewed by the General Services Administration, with the Department of Justice prison needs clearinghouse, in consultation with affected states and local governments, for the purpose of correctional facility use only. The prison needs clearinghouse is located in the Federal Bureau of Prisons and was created in August 1981 to assist states in their efforts to obtain surplus federal property for correctional use. Under this legislation, the clearinghouse will be the agency through which the Attorney General screens proposed conveyances and makes his recommendations to the Administrator of GSA. Prior to making his recommendation, the Attorney General shall determine that the applicant has provided for the consideration of local views with regard to the request for conveyance of this property.

If upon completion of his review, the GSA Administrator determines that no proposal is properly justified in light of the nature or value of the property, or if no application is received, the property should then be made available for other purposes authorized by the Federal Property Act and related legislation.

Second, with respect to surplus real property not previously used for correctional purposes, such property should be screened among all authorized recipients for uses generally provided by the Federal Property Act and related legislation, in accordance with normal surplus property procedures. These properties should be screened with the clearinghouse. Should any application for correctional use be received together with applications for other purposes, the selection of the grantee will be reserved to the Administrator of General Services on the basis of the justification submitted with the application. The merits of each should be considered in light of all factors affecting use, including adaptability of the property for correctional purposes, its importance for these purposes, the benefits to be derived from other uses, and the character and value of the real property.

Sections 484(p) (2) and (3) are technical amendments authorizing GSA to place such conditions and reservations upon the deed of conveyance as are necessary to protect the interests of the United States and the transferee.

Section (2) provides for reversion of the property to the United States at the option of the government in the event of use inconsistent with the purpose for which originally furnished. While the Administrator of GSA shall make the final determination, this provision is not intended to preclude use of the property for some complementary purpose so long as that purpose is clearly secondary and is consistent with the correctional objective for which the property was transferred.

Section (3)(a) authorizes the Administrator to determine and enforce compliance with the terms of any transfer agreement.

Section (3)(b) empowers the Administrator to reform, correct or amend any transfer agreement in order to satisfy legal requirements in existence at the time of the transfer. This provision does not authorize GSA to attach additional terms or restrictions to any transfer agreement as a result of a law, regulation, or policy determination not in existence at the time of the transfer.

Section (3)(c) further authorizes the Administrator to grant releases from a transfer agreement or any of its terms, or to yield any right or interest previously reserved to the United States, if he determines that the property no longer serves the purpose for which it was transferred or that such release or quitclaim will not prevent accomplishment of that purpose. The Committee is aware that, subsequent to the transfer, occasions may arise upon which the recipient will have a legitimate need to change the terms of a deed.

For example, property located on Blyth Island, Georgia, conveyed to the State of Georgia for park and recreational purposes was reconveyed to Glynn County for similar use. The restrictions requiring park use by the state were released so that the property could be conveyed to the county allowing an approved recreational program while imposing the original park use restrictions on the county.

One of the purposes of this section is to provide GSA with flexibility to accommodate these needs while protecting the interests of the federal government as originally intended. This section also gives the Administrator of GSA discretion to release recipients from all obligations to the government concerning transferred property when the Administrator determines that such property can no longer be economically used for the original purpose, and when it is not economically feasible or practical for the government to exercise its right of reversion.

The second section amends section 484 of title 40, United States Code, as amended (40 USC 484) (0) by revising the first sentence. The revision is a technical amendment requiring the Administrator to make an annual report to Congress on the total acquisition value of all personal and real property transferred pursuant to subsection (p) of this section. This provision extends to public benefit conveyances for correctional purposes the Congressional monitoring requirement now in effect for all other categories of public benefit conveyance.

IV. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b)(1) of Rule XXVI requires each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

The only regulatory impact associated with S. 1422 will result from the provision for GSA monitoring to ensure that property conveyed under this new authority continues to be used for the purpose for which it was originally transferred. This is not a new regulatory authority. It extends to conveyances for correctional purposes the same safeguards and paperwork requirements which are required for all public benefit conveyances.

V. ESTIMATED COST OF THE LEGISLATION

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimate of the cost of S. 1422, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., January 12, 1982.

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen
Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1422, a bill to authorize the donation of surplus property to any State for the construction and modernization of criminal justice facilities, as ordered reported by the Senate Committee on Governmental Affairs, December 9, 1981.

The bill would amend the Federal Property and Administrative Services Act of 1949 to authorize the Administrator of the General Services Administration (GSA) to donate surplus property to any State for the construction and modernization of criminal justice facilities. Donation of such property would be without cost to the State except for the costs of care and handling of the property. Under current law surplus property that is not donated to State or local governments for certain uses may be sold by GSA. This bill would, therefore, reduce receipts to the government by the potential sale price of any property that is donated to a State that would, otherwise, have been sold.

The CBO estimates that \$30 to \$50 million in receipts would be forgone in the first five years after enactment of this bill. This estimate is based on information provided by the Bureau of Prisons and GSA. This estimate assumes that all properties currently identified by the Bureau of Prisons as having a potential for donation as correctional facilities would be donated to the states, and that they would have been sold if this bill had not been enacted.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

VI. ROLLCALL VOTES IN COMMITTEE

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during Committee consideration of this legislation is as follows:

Final passage: Ordered reported, 9 yeas, 0 nays.¹

YEAS (9)

Danforth
Cohen
Mattingly
Rudman
Eagleton
Chiles
Nunn
Sasser
Stevens²
Roth

NAYS (0)

VII. CHANGES IN EXISTING LAWS

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is printed in roman):

SECTION 203 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE
SERVICES ACT OF 1949 (40 U.S.C. 484)

UNITED STATES CODE

TITLE 40—PUBLIC BUILDINGS, PROPERTY, AND
WORKS

CHAPTER 10—MANAGEMENT AND DISPOSAL OF
GOVERNMENT PROPERTY

484. Disposal of surplus property—Supervision and direction

(a) * * *

(o) The Administrator with respect to personal property donated under subsection (j) *of this section and with respect to personal or real property transferred or conveyanced under subsection (p) of this section*, and the head of each executive agency disposing of real property under subsection (k) of this section, shall submit during the calendar quarter following the close of each fiscal year a report to the

¹ By committee rules, proxy votes are counted for recording purposes only on final passage.

² Vote by proxy.

Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House if the House is not in session) showing the acquisition cost of all personal property so donated and of all real property so disposed of during the preceding fiscal year. [Such reports shall also show donations and transfers of property according to State, and may include such other information and recommendations as the Administrator or other executive agency head concerned deems appropriate.]

(p) (1) *Under such regulations as he may prescribe, the Administrator is authorized in his discretion to transfer or convey to the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision or instrumentality thereof, surplus property determined by the Attorney General to be required for correctional facility use by the authorized transferee or grantee under an appropriate program or project for the care or rehabilitation of criminal offenders as approved by the Attorney General. Transfers or conveyance under this authority shall be made by the Administrator without monetary consideration to the United States.*

(2) *The deed of conveyance of any surplus real property disposed of under the provisions of this subsection—*

(A) *shall provide that all such property shall be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the United States, revert to the United States; and*

(B) *may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator to be necessary to safeguard the interests of the United States.*

(3) *With respect to surplus real property conveyed pursuant to this subsection, the Administrator is authorized and directed—*

(A) *to determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in any instrument by which such transfer was made;*

(B) *to reform, correct, or amend any such instrument by the execution of a corrective reformatory or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and*

(C) *to (i) grant releases from any of the terms, conditions, reservations, and restrictions contained in, and (ii) convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was so transferred: Provided, That any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he or she shall deem necessary to protect or advance the interests of the United States."*